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CITY OF HEALDSBURG  
7

8 BEFORE THE STATE OF CALIFORNIA  
9 STATE WATER RESOURCES CONTROL BOARD  
10

11 In re Petition of:

12 CITY OF HEALDSBURG,  
13 Petitioner,  
14

15 From the decision of the

16 CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD, NORTH  
17 COAST REGION  
18  
19  
20

Petition No.:

RWQCB Order No. R1-2004-0064  
NPDES Permit No. CA 0025135  
Cease & Desist Order No. R1-2004-0065

**PETITION FOR REVIEW OF ISSUANCE  
OF NPDES PERMIT AND CEASE AND  
DESIST ORDER**

**REQUEST TO SUPPLEMENT RECORD**

**REQUEST FOR HEARING**

**REQUEST FOR STAY**

**REQUEST TO HOLD PETITION IN  
ABEYANCE**

21  
22  
23 **INTRODUCTION**

24 This is a Petition for Review and Request for Stay pursuant to Water Code Section 13320  
25 and Title 23, California Code of Regulations, Sections 2050 and 2053. Petitioner City of  
26 Healdsburg ("Healdsburg") seeks review of, and a stay of, orders issued by the California  
27 Regional Water Quality Control Board, North Coast Region (the "Regional Board").  
28

1 In 1970, Healdsburg commissioned a new wastewater treatment system. As designed, the  
2 system included primary settling ponds, secondary biodegradation ponds, and finally a retention  
3 and percolation pond. The plant was designed so that water would percolate from the retention  
4 pond into the surrounding aquifer, further cleansing the water in the process.

5 The new facility was designed and located specifically so that it could take advantage of  
6 several existing terrace mining pits as percolation ponds. These terrace mining pits, including the  
7 “Basalt Pond” that Healdsburg is using today, are large holes excavated in dry land, which then  
8 fill with percolating groundwater or water from other sources (e.g., treated wastewater). By using  
9 these existing pits to receive its treated wastewater, Healdsburg was able to avoid digging new  
10 percolation ponds and was able to take advantage of the additional polishing that these ponds  
11 provide due to their depth, size, and other unique characteristics.

12 Over the years, California’s North Coast Regional Water Quality Control Board issued a  
13 series of permits allowing Healdsburg to use terrace mining pits, including the Basalt Pond, as  
14 percolation ponds. The Regional Water Board is also the agency responsible for administering  
15 the federal NPDES program.

16 As intended, the wastewater discharged by the City into the Basalt Pond undergoes  
17 additional treatment in that pond prior to percolating to the surrounding aquifer. The treated  
18 wastewater resides in the Basalt Pond in excess of one year. During that time it undergoes de-  
19 nitrification, settling, oxidation, filtration, and other treatment processes. The water in the Basalt  
20 Pond then percolates into the surrounding aquifer. The water in the aquifer surrounding the  
21 Basalt Pond essentially meets all drinking water standards set by the Federal Government and by  
22 the California Department of Health Services.

23 In 2001, a citizen’s group, Northern California River Watch (“River Watch”), brought suit  
24 against the City of Healdsburg alleging, among other things, that the Basalt Pond was a “water of  
25 the United States” for purposes of the federal Clean Water Act (CWA), and that an NPDES  
26 permit was necessary for discharges into the Basalt Pond.

27 On January 23, 2004, the United States District Court in San Francisco, Judge William  
28 Alsop, (“District Court”) issued an order finding that the Basalt Pond is a “water of the United

1 States” and requiring Healdsburg to obtain an NPDES permit. Healdsburg has appealed this  
2 order; briefing is now complete before the Court of Appeals for the Ninth Circuit.

3 As required by the District Court order, Healdsburg applied for and has now obtained an  
4 NPDES permit from the Regional Board. The permit, Order No. R1-2004-0064 (NPDES Permit  
5 No. CA 0025135) (the “Permit”), and the associated Cease and Desist Order, Order No. R1-2004-  
6 0065 (the “CDO”), were issued October 6, 2004 and are effective November 30, 2004, pending  
7 amendment at the Regional Board’s next scheduled hearing.

8 Leaving aside the issue of federal CWA jurisdiction that is now being determined in the  
9 federal courts, the Permit and CDO are improper for two primary reasons:

10 First, the Regional Board improperly imposed a seasonal discharge limitation and  
11 prohibition. It ordered that the “discharge of wastewater effluent from the WWTF to the Russian  
12 River or its tributaries [including the “tributary” Basalt Pond] is prohibited during the period May  
13 15 through September 30 each year.” (Permit, Discharge Prohibitions ¶ 7) It also ordered that  
14 during “the period of October 1 through May 14, discharges of wastewater shall not exceed one  
15 percent of the flow of the Basalt Pond.” (Permit, Discharge Prohibitions ¶ 9) This seasonal  
16 discharge limitation and prohibition (Collectively “Seasonal Discharge Limitation/Prohibition”)  
17 is, in effect, an unreasonable and absolute prohibition of discharge year-round because the Basalt  
18 Pond has no “flow” besides the incoming effluent from the city and *de minimis* contributions  
19 from Syar and rainfall.

20 Second, the Regional Board improperly imposed interim limits for copper, BOD and total  
21 Suspended Solids (TSS) which go into effect immediately and which are unattainable using  
22 Healdsburg’s present treatment technology.<sup>1</sup>

23 The result of these and other errors by the Regional Board is that Healdsburg’s 11,000  
24 residents will be required to find new methods of treatment and disposal, which will likely  
25 include spending millions of dollars building new expensive lined retention ponds on land itself

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26 <sup>1</sup> The Regional Board is scheduled to amend the permit on November 29 to correct the  
27 interim limits for Copper and to address the Seasonal Discharge Limitation/Prohibition.  
28 Healdsburg and the Regional Board are also discussing ways of correcting the interim limits for  
BOD and TSS.

1 made expensive by its use for valuable vineyards. There will be no corresponding benefit to the  
2 environment from any of the actions required by the Permit and the Cease and Desist Order since  
3 Healdsburg's present waste treatment system, including its incorporation of the Basalt Pond as a  
4 retention and percolation pond, causes no adverse environmental impacts. The City's current  
5 waste treatment system, including its designed use of the Basalt Pond as a retention and  
6 percolation pond, are perfectly able to meet all *reasonable, necessary, and appropriate* effluent  
7 limits without adversely affecting any real and legitimate beneficial uses of any water of the state  
8 or water of the United States. Healdsburg urges the State Board to accept this petition, not only  
9 to protect the City and its residents against the consequences of the Regional Board's errors, but  
10 also so that the State Board can address the many issues of state-wide importance raised by this  
11 petition.

12 Healdsburg further requests the State Board conduct a full evidentiary hearing so that the  
13 issues raised by the City can be fully and properly addressed. In the meantime, Healdsburg asks  
14 the State Board to stay the application of the Permit (leaving the prior permit in place) so that  
15 Healdsburg is not required to expend scarce public resources on the design and construction of  
16 unnecessary holding ponds.<sup>2</sup>

## 17 18 PETITION FOR REVIEW

19 Pursuant to California Code of Regulations section 2050(a), Petitioner provides the  
20 following information:

### 21 (1) Name and Address of Petitioner

22  
23 City of Healdsburg  
24 Attn: George Hicks  
25 Director of Public Works  
26 410 Grove Street

27  
28 <sup>2</sup> Although Healdsburg is requesting a stay, it is also requesting the State Board hold this  
petition in abeyance for a brief period so that ongoing discussions with the Regional board can be  
concluded. Healdsburg will promptly advise the State Board if these discussions fail to resolve  
some of the most pressing issues raised by this Petition, so that the State Board can resume  
consideration of Healdsburg's Petition.

1 Healdsburg, CA 95448

2  
3 With copies to:

4 Peter W. McGaw, Esq.  
5 Archer Norris  
6 2033 N. Main Street, Ste. 800  
7 Walnut Creek, CA 94596

8  
9  
10 **(2) Specific Action State Board is requested to Review**

11 The State Board is requested to review:

12 (a) Order No. R1-2004-0064 (NPDES No. CA 0025135), Waste Discharge  
13 Requirements for the City of Healdsburg Wastewater Treatment Plant, Sonoma County  
14 (including the Monitoring and Reporting Program for City of Healdsburg Wastewater Treatment  
15 Plant, Sonoma County) (“the Permit”) (Exhibit A); and

16 (b) Order No. R1-2004-0065, Requiring City of Healdsburg Wastewater Treatment  
17 Plant to Cease and Desist from Discharging Contrary to Requirements, (“the Cease and Desist  
18 Order” or “CDO”) (Exhibit B).

19 **(3) Date on Which Regional Board Acted**

20 October 6, 2004.

21 **(4) Statement of Reasons for the Petition**

22 Healdsburg asks the State Board to review the actions of the North Coast Regional Board  
23 for the following reasons:

24 **A. Clean Water Act Jurisdiction**

25 1. The Regional Board erred in finding that the “continuing discharge of wastewater to  
26 the Basalt Pond requires an NPDES permit.” (Permit at 4, Findings ¶ 12) The bases of the  
27 Regional Board’s finding are the following erroneous findings:

28 a. That “the Basalt Pond, and the wetlands along it, are hydrologically  
connected to the Russian River and therefore waters of the United States.” (Permit  
at 5, Findings ¶ 17)

b. That “the Basalt Pond is a surface tributary by virtue of periodic

1 inundation by the Russian River.” (Permit at 5, Findings ¶ 17)

2 c. That “the Basalt Pond is also waters of the United States because it  
3 is adjacent to open water.” (Permit at 6, Findings ¶ 18)

4 d. That “[e]ven if the Basalt Pond were not waters of the United  
5 States, the discharge of wastewater would still require an NPDES permit because  
6 the water flowing out of the pond is hydrologically connected to the Russian  
7 River.” (Permit at 6, Findings ¶ 19)<sup>3</sup>

8 e. That the application of the “excavation operation” exemption from  
9 the definition of the waters of the United States “would not be appropriate.”  
10 (Permit at 6, Findings ¶ 20)

11 f. That “the Basalt Pond is not exempt from the Clean Water Act as a  
12 part of a ‘waste treatment system.’” (Permit at 7, Findings ¶ 21)

13 2. Healdsburg was deprived of due process of law regarding the above “findings”  
14 because (a) the Executive Officer’s Summary Report advised that “whether an NPDES permit is  
15 required is not before the Regional Water Board, but is the subject of ongoing litigation,” and (b)  
16 crucial documents submitted by Healdsburg to the board regarding the above issues were “not  
17 copied for the Regional Water Board” and were not considered by the board when it approved the  
18 permit containing the findings challenged above.

19 3. The above “findings” are not supported by evidence in the record and, indeed, are  
20 contradicted by the record.

21 4. The above “findings,” which in fact are combinations of facts and conclusions of law,  
22 are contrary to law.

23 5. The decision of the District Court reflects an error of law and fact. It was that order  
24 which formed the basis for Healdsburg’s decision to submit an application for an NPDES permit  
25 in the first place, and it was that order upon which the Regional Board relied in issuing an

26  
27 <sup>3</sup> Healdsburg further notes this particular finding does not support the Permit and CDO, as  
28 the Permit and CDO as adopted are clearly focused on the discharge into the Basalt Pond, without  
any consideration of the actual impact of that discharge on the Russian River.

1 NPDES permit for a discharge it had, for over 30 years interpreted, as a discharge subject only to  
2 state permitting requirements. Because the Regional Board's actions in issuing its Permit and  
3 CDO were based on an erroneous decision by the District Court, the Regional Board's orders are  
4 not supported by the evidence in the record or by law.

5 **B. Beneficial Uses**

6 6. The Regional Board erred in finding that the "existing and potential beneficial uses of  
7 the Basalt Pond," a man-made, privately-owned pond, include the following: municipal and  
8 domestic supply; agricultural supply; industrial service supply; industrial process supply;  
9 groundwater recharge; navigation; hydropower generation; water contact recreation; non-contact  
10 water recreation; commercial and sport fishing; warm freshwater habitat; cold freshwater habitat;  
11 wildlife habitat; migration of aquatic organisms; spawning, reproduction, and/or early  
12 development; estuarine habitat; and aquaculture, most of which are uses for which the Basalt  
13 Pond is not used, is not likely to be used, and certainly will not be used during this permit term.  
14 Therefore, imposition of effluent limitations and receiving water limitations based on these  
15 presently non-existent beneficial uses, or based – at best – on speculative future beneficial uses  
16 that will not exist during the current permit term, is unreasonable, and is supported by neither  
17 evidence in the record nor law. (Permit at 8-9, Findings ¶ 27)

18 7. The Regional Board erred in imputing the beneficial uses of the Russian River to the  
19 Basalt Pond on the basis of the "tributary statement" or "tributary rule" contained in the North  
20 Coast Basin Plan. The tributary statement was never intended to apply to water bodies such as  
21 the Basalt Pond and, to so apply it now without proper consideration of the requirements of both  
22 the Water Code and the Administrative Procedure Act constitutes an unlawful application of the  
23 Basin Plan language, which language itself was never lawfully adopted, at least insofar as it is  
24 now interpreted as applying to Healdsburg's situation.

25 8. The findings that the foregoing uses either are existing beneficial uses or are potential  
26 beneficial uses that must be "protected" with the present permit are not supported by evidence in  
27 the record.

28 9. Finding that the foregoing beneficial uses in fact exist, may exist in the future (and

1 need to be “protected” by effluent limits imposed during the current permit term), or have been  
2 “designated” to exist, and imposition of requirements and limitations based on those findings, are  
3 not supported by the evidence in the record, are contrary to law, and reflects an abuse of  
4 discretion by the Regional Board.

5 **C. Seasonal Discharge Prohibitions and Limitations**

6 10. The Regional Board improperly ordered that the “discharge of wastewater effluent  
7 from the WWTF to the Russian River or its tributaries is prohibited during the period May 15  
8 through September 30 each year.” (Permit at 13, Discharge Prohibitions ¶ 7)

9 11. The Regional Board improperly ordered that during “the period of October 1 through  
10 May 14, discharges of wastewater shall not exceed one percent of the flow of the Basalt Pond.”  
11 (Permit at 13, Discharge Prohibitions ¶ 9)

12 12. The foregoing Seasonal Discharge Limitation/Prohibition constitute an unlawful  
13 application of the Basin Plan language which was never intended to apply to Healdsburg’s  
14 situation, and which language itself was never lawfully adopted, at least insofar as it is now  
15 interpreted as applying to Healdsburg’s situation.

16 13. Findings that the Seasonal Discharge Limitation/Prohibition should and lawfully may  
17 be applied to Healdsburg’s discharge to the Basalt Pond, and imposition of requirements and  
18 limitations based on those findings, are not supported by the evidence in the record, are contrary  
19 to law, and reflects an abuse of discretion by the Regional Board.

20 **D. Specific Effluent Limitations**

21 14. AWT: The Regional Board erred in requiring that Healdsburg treat its discharge  
22 based on the findings that the “Basin Plan requires municipal wastewater discharged to the  
23 Russian River or its tributaries be treated to Advanced Wastewater Treatment (AWT) levels.”  
24 (Permit at 7, Findings ¶ 23) The Basin Plan does not define AWT levels and this language was  
25 never legally adopted, so effluent limitations and other requirements based on this language are  
26 unlawful, at least insofar as the Basin Plan language is now interpreted as applying to  
27 Healdsburg’s situation. Findings that the Basin Plan’s AWT requirements should and lawfully  
28 may be applied to Healdsburg’s discharge to the Basalt Pond, and imposition of requirements and



1 limitations based on those findings, are not supported by the evidence in the record, are contrary  
2 to law, and reflects an abuse of discretion by the Regional Board.

3 15. **Chlorine Residual**: The Regional Board improperly ordered that effluent discharged  
4 to the Basalt Pond shall not contain detectable levels of total chlorine using an analytical method  
5 or chlorine analyzer with a minimum detection level of 0.1 mg/l, without allowing proof of the  
6 absence of chlorine residual in effluent through the use of monitoring for dechlorinating agents  
7 (sulfur hydroxide or sodium bisulfite). (Permit at 14, Effluent Limitations ¶ 4) The Regional  
8 Board's failure to adopt and incorporate Healdsburg's reasonable request in the Permit was not  
9 supported by the evidence in the record, was contrary to law, and reflects an abuse of discretion  
10 by the Regional Board.

11 16. **Copper**: The Regional Board improperly imposed interim "performance-based"  
12 limits for copper in effect immediately and continuing until October 6, 2009. (Permit at 14,  
13 Effluent Limitations ¶ 8) These interim limits are unattainable immediately because  
14 Healdsburg's present facility was not designed to meet such standards for the discharge to the  
15 Basalt Pond, and cannot be made to meet such standards with reasonable modification. The  
16 Regional Board should have adopted interim performance-based limits that accurately reflected  
17 the treatment plant's actual performance, or it should have deferred adopting such numeric limits  
18 until it had sufficient data to accurately predict the treatment plant's actual performance. The  
19 Regional Board's imposition of imposed interim "performance-based" limits for copper is not  
20 supported by the evidence in the record, is contrary to law, and reflects an abuse of discretion by  
21 the Regional Board.

22 17. **Acute Toxicity**: The Regional Board erred in requiring Healdsburg to perform a  
23 Toxicity Reduction Evaluation (TRE) prior to Healdsburg's completion of the treatment plant  
24 upgrades required by the Permit and the CDO. Until those upgrades are complete and on-line, it  
25 is impossible to determine whether there will be aquatic toxicity from the resulting discharge. The  
26 Regional Board's imposition of a requirement that Healdsburg perform a TRE is not supported by  
27 the evidence in the record, is contrary to law, and reflects an abuse of discretion by the Regional  
28 Board.

1           18. **Secondary Limits**: The Regional Board improperly imposed interim limits for  
2 Biological Oxygen Demand (“BOD”) and total Suspended Solids (“TSS”) in effect immediately  
3 and continuing until December 31, 2007, as follows:

4

Constituent	Unit	Monthly Average	Weekly Average
BOD (20°, 5-day)	mg/l	30	45
	lb/day	350	525
Suspended Solids	mg/l	30	45
	lb/day	350	525

7

8 (Permit at 14-15, Effluent Limitations ¶ 9)<sup>4</sup> These interim limits are unattainable immediately  
9 because Healdsburg’s present facility was not designed to meet such standards for the discharge  
10 to the Basalt Pond, and cannot be made to meet such standards with reasonable modification.  
11 The Regional Board refused to include interim performance-based limits for these constituents.  
12 The Regional Board’s failure to include interim performance-based limits for these constituents,  
13 at a time when Healdsburg is planning an improved wastewater treatment facility that will come  
14 on line as soon as possible, is not supported by the evidence in the record, is contrary to law, and  
15 reflects an abuse of discretion by the Regional Board.

16 **E.     Receiving Water Limitations**

17           19. **Dissolved Oxygen**: The Regional Board improperly ordered that the waste discharge  
18 shall not cause the dissolved oxygen concentration of the receiving waters to be depressed below  
19 7.0 mg/l or, in the event that the receiving waters are determined to have dissolved oxygen  
20 concentration of less than 7.0 mg/l, the discharge shall not depress the dissolved oxygen  
21 concentration below the existing level. (Permit at 15, Receiving Water Limitation ¶ 1) This  
22 limitation is based on a non-existent COLD beneficial use attributed to the Basalt Pond by  
23 application of the so-called “tributary rule.” See ¶¶ 6-9 above. The Regional Board’s imposition  
24 of the foregoing Dissolved Oxygen limitations is not supported by the evidence in the record, is  
25 contrary to law, and reflects an abuse of discretion by the Regional Board.

26           20. **pH**: The Regional Board improperly ordered that the discharge shall not cause the pH

27 <sup>4</sup> Moreover, although the Regional Board intended that interim limits for BOD and TSS be  
28 in place until December 31, 2007, it failed to specifically incorporate the 85 percent removal  
requirement (Permit at 14, Effluent Limitations ¶ 7) in the interim limitations in ¶ 9.

1 of the receiving waters to be depressed below 6.5 nor raised above 8.5 and that, within this range,  
2 the discharge shall not cause the pH of the receiving waters to be changed at any time more than  
3 0.5 units from that which occurs naturally. (Permit at 15, Receiving Water Limitation ¶ 2)  
4 Imposition of these receiving water limitations is not reasonably necessary to protect beneficial  
5 uses, and there is no evidence in the record to support such a limitation. To the extent this  
6 limitation is based on language in the Basin Plan, that language was never lawfully adopted, at  
7 least insofar as it is now being interpreted, and may not be applied to Healdsburg in the present  
8 permit. The Regional Board's imposition of the foregoing pH limitations is not supported by the  
9 evidence in the record, is contrary to law, and reflects an abuse of discretion by the Regional  
10 Board.

11 21. **Turbidity**: The Regional Board improperly ordered that the discharge shall not cause  
12 the turbidity of the receiving waters to be increased more than 20 percent above naturally  
13 occurring background levels. (Permit at 15, Receiving Water Limitation ¶ 3) Imposition of this  
14 limitation is not reasonably necessary to protect beneficial uses, and there is no evidence in the  
15 record to support such a limitation. To the extent this limitation is based on language in the Basin  
16 Plan, that language was never lawfully adopted, at least insofar as it is now being interpreted, and  
17 may not be applied to Healdsburg in the present permit. The Regional Board's imposition of the  
18 foregoing Turbidity limitations is not supported by the evidence in the record, is contrary to law,  
19 and reflects an abuse of discretion by the Regional Board.

20 22. **Temperature**: The Regional Board improperly ordered that the discharge shall not  
21 alter the natural temperature of the receiving waters. (Permit at 16, Receiving Water Limitation ¶  
22 10) Imposition of an absolute prohibition of any change in water temperature is not reasonably  
23 necessary to protect beneficial uses, and there is no evidence in the record to support such a  
24 limitation. To the extent this limitation is based on language in the Basin Plan, that language was  
25 never lawfully adopted, at least insofar as it is now being interpreted, and may not be applied to  
26 Healdsburg in the present permit. The Regional Board's imposition of the foregoing Temperature  
27 limitations is not supported by the evidence in the record, is contrary to law, and reflects an abuse  
28 of discretion by the Regional Board.

1           23. **Pesticides:** The Regional Board improperly ordered that there shall be no  
2 bioaccumulation of pesticide concentrations found in bottom sediments or aquatic life as a result  
3 of the discharge. (Permit at 16, Receiving Water Limitation ¶ 11) Imposition of an absolute  
4 prohibition of bioaccumulation of pesticides is unachievable and is not reasonably necessary to  
5 protect beneficial uses, and there is no evidence in the record to support such a limitation. To the  
6 extent this limitation is based on language in the Basin Plan, that language was never lawfully  
7 adopted, at least insofar as it is now being interpreted, and may not be applied to Healdsburg in  
8 the present permit. The Regional Board's imposition of the foregoing Pesticide limitations is not  
9 supported by the evidence in the record, is contrary to law, and reflects an abuse of discretion by  
10 the Regional Board.

11       **F.       Groundwater Limitations**

12           24. The Regional Board improperly ordered that the collection, storage, and use of  
13 wastewater shall not cause or contribute to a statistically significant degradation of groundwater  
14 quality. (Permit at 17, Ground Water Limitation). Imposition of groundwater limitations more  
15 stringent than necessary to insure that the collection, storage and disposal of wastewater shall not  
16 cause or contribute to degradation of groundwater quality that adversely and unreasonably  
17 impacts beneficial uses is not reasonably necessary to protect beneficial uses, and there is no  
18 evidence in the record to support such a limitation. To the extent this limitation is based on  
19 language in the Basin Plan, that language was never lawfully adopted, at least insofar as it is now  
20 being interpreted, and may not be applied to Healdsburg in the present permit. The Regional  
21 Board's imposition of the foregoing Groundwater limitations is not supported by the evidence in  
22 the record, is contrary to law, and reflects an abuse of discretion by the Regional Board.

23       **G.       Source Control Provisions**

24           25. The Permit improperly and unlawfully requires Healdsburg to implement a broad  
25 source control program, even though "reasonable potential" was found to exist only for a single  
26 effluent constituent, copper. The Regional Board's imposition of the foregoing Source Control  
27 Requirement is not supported by the evidence in the record, is contrary to law, and reflects an  
28 abuse of discretion by the Regional Board.

1     **H.     Compliance Schedule**

2             26. The Regional Board improperly refused to include a time schedule order in the Permit  
3     for certain new effluent limits, and instead put the time schedule in the Cease and Desist Order,  
4     potentially subjecting Healdsburg to liability in citizens suits for violations of effluent limits  
5     during the period it is building the facilities necessary for compliance. The Regional Board  
6     erroneously concluded its Basin Plan does not allow it to include time schedule orders for these  
7     new effluent limits in permits. The Regional Board's failure to include compliance schedules in  
8     the Permit rather than in the separate CDO, is not supported by the evidence in the record, is  
9     contrary to law, and reflects an abuse of discretion by the Regional Board.

10    **I.     Compliance With the Water Code**

11            27. The Regional Board failed to evaluate the economic impact on Healdsburg of  
12    complying with the Permit and the individual effluent limits in the Permit, and failed to consider  
13    other factors, as required by the Water Code, and failed to otherwise comply with Water Code §§  
14    13000, 13263(a), 13241, and 13242. The Regional Board's failure to comply with the  
15    requirements of the Water Code is not supported by the evidence in the record, is contrary to law,  
16    and reflects an abuse of discretion by the Regional Board.

17    **J.     Compliance With CEQA**

18            28. The Regional Board failed to evaluate the environmental consequences of the permit  
19    as required by the California Environmental Quality Act ("CEQA"). The Regional Board's  
20    failure to comply with CEQA is not supported by the evidence in the record, is contrary to law,  
21    and reflects an abuse of discretion by the Regional Board.

22    **K.     Other Errors**

23            29. The requirements of the Permit and the Cease and Desist Order are not supported by  
24    the findings.

25            30. The findings of the Permit and the Cease and Desist Order are not support by the  
26    evidence in the record.

27            31. The Regional Board acted improperly and unlawfully for such other reasons as were  
28    raised below by Healdsburg and are reflected in the record (which reasons are incorporated here

1 by reference), and for such other reasons as may become apparent once the record in this matter is  
2 prepared or based upon additional evidence or other matters that may become apparent while this  
3 Petition is pending.

4 **(5) The Manner in Which Petitioner is Aggrieved**

5 Healdsburg is subject to unlawful and unreasonable permit requirements and an unlawful  
6 and unreasonable Cease and Desist Order. Healdsburg and its residents will be required to expend  
7 several million dollars for capital improvements plus additional millions of dollars in increased  
8 operating expenses just to construct and operate needless additional facilities in order to meet the  
9 unlawful and unnecessary requirements imposed by the Regional Board. Hundreds of thousands  
10 of dollars of public funds will need to be spent even while this petition is pending and the Permit  
11 and the Cease and Desist Order are being reviewed by the State Board. Public funds expended  
12 while this petition is pending will not be recoverable even if the orders are overturned or modified  
13 in a way that would have made the expenditures unnecessary. Further, Petitioner will be subject  
14 to third-party enforcement actions (citizen's suits) during the time it cannot meet the limits of the  
15 Permit. Healdsburg may be subject to "anti-backsliding" prohibitions in the event it later seeks to  
16 modify the requirements of the Permit. The manner in which Healdsburg is aggrieved will be set  
17 forth at further length in additional pleadings, including a full memorandum of points and  
18 authorities, once the record is prepared.

19 **(6) Specific Action Requested**

20 Healdsburg requests that the State Board:

21 (a) Set aside or modify the Regional Board's orders identified above, pursuant to Title  
22 23, California Code of Regulations, Section 2052(a)(2)(B) or direct the Regional Board to take  
23 such action itself pursuant to Section 2052(a)(2)(C).

24 (b) Allow Healdsburg to supplement the record with such additional evidence as is or  
25 may become available. Healdsburg will identify such additional evidence once the record is  
26 prepared.

27 (c) Hold a hearing for the purpose of oral argument and receipt of the foregoing  
28 additional evidence, pursuant to Title 23, California Code of Regulations, Section 2052(c).

1           **(7) Statement of Points and Authorities on Legal Issues**

2           Petitioner will submit a full memorandum of points and authorities once the record has  
3           been prepared.

4           **(8) Statement that Petition Sent to Regional Board**

5           A copy of this petition has been sent to the California Regional Water Quality Control  
6           Board, North Coast Region.

7           **(9) Statement that Issues were Raised Below**

8           All substantive issues and objections raised by this petition were raised before the  
9           Regional Board, or petitioner was not required to raise them, or was unable to raise them below  
10          because petitioner was unaware of them and could not have reasonably been aware of them in  
11          time to raise them before the Regional Board, or because the Regional Board artificially curtailed  
12          the amount of time Healdsburg was given to raise issues before the Regional Board.

13                   **REQUEST TO SUPPLEMENT RECORD**

14          Pursuant to Water Code § 13320(b), the City respectfully requests this Board to  
15          supplement the record before it. Healdsburg will advise the Board more specifically in this  
16          regard once the record has been prepared, and it knows what matters have not been included by  
17          the Regional Board.

18                   **REQUEST FOR HEARING**

19          Pursuant to Water Code 13320(b) and Title 23, California Code of Regulations § 2052(c),  
20          Healdsburg respectfully requests this Board to hold an evidentiary hearing to allow evidence not  
21          contained in the record, but which may be relevant to the State Board's consideration of the  
22          Petition, to be developed and considered, and so that Healdsburg may receive the due process to  
23          which it is entitled.

24                   **REQUEST FOR STAY**

25          Petitioner requests a stay of the Regional Board's orders pursuant to California Water  
26          Code Section 13321(a) and Title 23, California Code of Regulations, Section 2053. Healdsburg  
27          will supplement this stay request with declarations and a memorandum of points and authorities  
28          in the near future.

1                                   **REQUEST TO HOLD PETITION IN ABEYANCE**

2           The Regional Board has noticed a hearing on an amendment of the permit for November  
3 29, 2004, to address the interim performance-based copper limit and the Seasonal Discharge  
4 Limitation/Prohibition. Healdsburg and the Regional Board are also in discussions regarding the  
5 interim BOD and TSS limits. Accordingly, pursuant to Title 23, California Code of Regulations  
6 § 2050(d), Healdsburg asks the State Board to hold this petition in abeyance for a brief period so  
7 that the Regional Board may conduct its hearing on November 29, and so the discussions between  
8 Healdsburg and the Regional Board may be concluded. Healdsburg will promptly notify the State  
9 Board when it is ready to have its petition and request for stay considered.

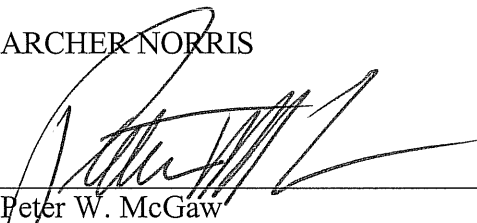
10                                   **CONCLUSION**

11           For the foregoing reasons, Healdsburg asks the State Board to accept this petition for  
12 review of the adoption of the Permit and the Cease and Desist Order by the Regional Board, stay  
13 the operation of the Permit and the Cease and Desist Order until the City's petition for review of  
14 the Permit has been fully considered by the State Board, allow the record to be supplemented to  
15 include the relevant information, and hold an evidentiary hearing.

16           Dated: November 5, 2004.

17                                   Respectfully submitted,

18                                   ARCHER NORRIS

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20                                   \_\_\_\_\_  
21                                   Peter W. McGaw  
22                                   Attorneys for Petitioner  
23                                   CITY OF HEALDSBURG  
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